



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0367]

Hours of Service of Drivers: Association of American Railroads and American Short Line and Regional Railroad Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the Association of American Railroads and American Short Line and Regional Railroad Association (AAR/ASLRRA) requesting a limited exemption from the maximum driving time requirements of the hours-of-service (HOS) regulations for drivers of property-carrying vehicles. The applicants request the exemption to enable affected railroad employees, subject to the HOS rule, to respond to an unplanned event that occurs outside of or extends beyond the employee's normal work hours. FMCSA requests public comment on AAR/ASLRRA's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0367 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; Telephone: (202) 366-4225; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0367), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2018-0367" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-

addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Association of American Railroads and American Short Line and Regional Railroad Association (AAR/ASLRRA) contend that the HOS prohibitions on driving after a 14-hour period on duty, and after 60 or 70 hours on duty in a 7- or 8-day week without the required off-duty period, inhibit a railroad's ability to respond expeditiously

to certain types of emergency situations. For this reason AAR/ASLRRA is requesting that a railroad employee responding to an unplanned event that affects interstate commerce, service or the safety of railway operations, including passenger rail operations, and that occurs outside of or extends beyond the employee's normal shift, be exempt from the provisions in 49 CFR part 395.3(a) and (b). Unplanned events include some of the following: a derailment; a rail failure or other report of dangerous track condition; a disruption to the electric propulsion system; a bridge-strike; a disabled vehicle on the track; a train collision; weather and storm-related events; a matter of national security; or a matter concerning public safety; a blocked grade crossing, etc. The applicants request the exemption be granted for five years. If the exemption is granted it would cover 21,000 drivers and 11,000 commercial motor vehicles (CMVs).

In their application, AAR/ASLRRA compare the work of railroad employees responding to an emergency situation to that of utility employees responding to an emergency situation. The HOS rules do not apply to a driver of a utility service vehicle as defined in 49 CFR 395.2. In the same respect that utility employees use any CMV to repair and maintain pertinent services, railroad employees use vehicles as mobile supply facilities, transporting personnel, equipment and material needed for the driver to use at worksites within a region. Like utility employees, railroad employees will have unpredictable work hours when needed to address operational emergencies.

AAR/ASLRRA contend that the work done by these employees supports the railroad's effort to restore essential interstate commerce passenger rail operations and, in the event of a grade crossing incident, restore road and pedestrian access to the public.

The applicants assert that there is no principled distinction between railroad employees responding to an unplanned event and those who operate utility service vehicles.

According to AAR/ASLRRA railroads work with local officials who have authority to declare an emergency in the case of unplanned events. However, the process is not well-defined and there are no assurances that a request made during off-hours would be reviewed in a timely manner. For example, one of AAR's member railroads has an internal process that often involves coordination among multiple jurisdictions due to the nature of the interstate railroad system. Despite the railroad's best efforts, a delay in response from a designated official outside of the normal work day can reportedly cause up to a five to seven-hour delay in the railroad's efforts to resolve the unplanned event. According to the applicants, this type of delay can have a crippling impact on the rail network, especially in congested areas of the country like the Northeast Corridor and Chicago.

IV. Method to Ensure an Equivalent or Greater Level of Safety

AAR/ASLRRA explained that "the requested exemption will allow railroad employees to respond timelier to unplanned events to restore rail service without incurring extended blocked crossings, cascading effects to traffic on the rail network, delays to passenger rail operations, and delayed customer service. Additionally, railroads will be able to improve public safety to motorists and pedestrians, if they are able to expeditiously clear blocked grade crossings."

The applicants propose to provide any employee required to drive within the terms of the requested exemption additional time off-duty in excess of the 10 consecutive hours required by 395.3(a)(1). For ease of recordkeeping, the applicants propose that:

- Any employee responding to an unplanned event that exceeds his/her 14 hours of duty time for 5 hours or less be given 5 additional consecutive hours off-duty for a total of 15 consecutive hours off-duty before driving again;
- Any employee responding to an unplanned event that exceeds his/her 14 hours of duty time for 5 hours up to a maximum of 10 hours be given 10 additional consecutive hours off-duty for a total of 20 consecutive hours off-duty before driving again; and
- Any employee who exceeds 60 or 70 hours on duty in a 7- or 8-day week due to responding to an unplanned event be given 34 hours of rest as prescribed in section 395.3 (c) prior to driving again.

A copy of the application for exemption is available for review in the docket for this notice.

Issued on: December 7, 2018.

Larry W. Minor,
Associate Administrator for Policy.

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